

# Zoning Board of Appeals– Town of Spencer



## *Minutes*

### Zoning Board of Appeals

Tuesday, August 25, 2009

McCourt Social Hall

Memorial Town Hall

---

The Meeting was called to order at 7:15 p.m.

Zoning Board of Appeals Members Present: Chair Joanne Backus, Clerk Allan Collette, Pamela Crawford, Albert Drexler (Alternate), and Delores Kresco (Alternate).

Zoning Board Member Absent: None.

Staff present: Adam Gaudette, ODIS Director.

#### **New Business:**

**A. Special Permit – Stephen Merchant and Janet Martin, 2 Kittredge Road. Ms. Backus opened the public hearing at 7:20 p.m.** The Clerk read the brief. The applicants propose an alteration of a pre-existing nonconforming single-family structure by demolishing the existing structure and building a new home. The new home will still be within the required setbacks, but less nonconforming. The property is located in the Rural Residential zoning district.

The Board reviewed the plan at this time, Ms. Backus then asked if the applicants had any additional information to present to the Board. There was not any.

Ms. Backus then opened the Board for any questions and comments.

Mr. Drexler asked if the new home will have an attached garage since there is an existing garage already. Mr. Merchant said the new home will not have an attached garage.

Mr. Collette asked the reason for demolishing the existing house. The applicants stated since they are going to live in the property, they want to improve the current situation; make the house and the property more attractive and desirable.

Ms. Kresco asked why they are choosing to build the new home in angular position on the lot. Mr. Merchant explained that he has seen several plans with differing positions of the house, and from an aesthetic point of view, this angular position is the best option. Also, houses in the area situate in the angular position, thus the new house will be in the same formation as the rest of the neighborhood.

Ms. Crawford asked if the existing driveway will be extended. The applicants replied the driveway and everything else will remain the same except the new house will be in the angled position.

Mr. Drexler asked for a clarification on the setbacks. Mr. Gaudette stated that the setbacks will be less nonconforming. (*The proposed structure actually will make the nonconformities equal or better*).

*There were no abutters present tonight for this hearing.*

With no further questions and comments from the Board, Mr. Collette made a motion to close the public hearing at this time. Ms. Crawford seconded the motion and the vote was 5-0 in favor. Ms. Backus announced the members in voting are: Mr. Collette, Ms. Crawford, and herself.

Mr. Collette made a motion to approve the special permit to Mr. Stephen Merchant to demolish the existing structure and building a new home at 2 Kittredge Road, Spencer. The new home will be within the required setbacks, but less nonconforming. Ms. Crawford seconded the motion and the **vote was 3-0** in favor. The following was included in the motion:

**Findings:** The Board determined that the findings had met the requirement in M.G.L., Chapter 40A., Sec. 9 and Section 7.2 of the Spencer Zoning Bylaws:

1. That the proposed use (single-family residential) is in harmony with the general purpose and intent of the zoning bylaw.
2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. That the proposed use will not impair the integrity or character of the district or adjoining zones, nor will it be detrimental to the health, safety, or welfare of the neighborhood or the Town.

**In addition,** the Zoning Board made the following finding in accordance with Section 4.9.2.A.2 of the Spencer Zoning Bylaw:

1. That proposed extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

This approval is granted with the following **conditions**:

1. The plan that was submitted for the design is herein incorporated as part of this decision. Any change requires re-submittal to the Board.
2. Construction activities shall not commence until all required approvals and permits are obtained.

Mr. Gaudette explained that once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and to all abutters.

**B. Special Permit – James Bouley, 67 Jolicoeur Avenue. Ms. Backus opened the public hearing at 8:00 p.m.** Mr. Gaudette explained that in January of 2009, the Board granted a special permit for the applicant to replace and reconstruct an existing single-family house which is situated on a nonconforming lot. The certificate of decision has been recorded at the Registry of Deeds. Mr. Bouley now wants to make a modification to the house and to the approved plan. He has re-submitted the application for a special permit with a new plan.

The Clerk then read the brief. The applicant proposes an alteration of an existing single-family house on a pre-existing nonconforming lot by demolishing the existing house and building a new house. The new house is within the required setbacks, but is further from the property line than the existing house currently is located. The property is in the Lake Residential zoning district.

Ms. Backus asked for the presentation of the proposed plan.

Mr. Jason Dubois, the applicant's engineer, and Mr. Jack Ryan, applicant's architect, were present. Mr. Dubois stated that after reviewing the plan with the applicant and Mr. Ryan, they came up with a more efficient plan that not just upgrades the house, but also maximizes the use of the land lot and allows for more yard area. He then presented the proposed plan and the existing plan to the Board. The setbacks on the proposed plan are more conforming; front setback is from 1 foot to 3.1 feet; side setback (southwesterly side) is from 4.6 feet to 5 feet. The rear setback is also within the requirement. The septic system will be installed on the lot adjacent to the property, and the Board of Health has already approved the design.

At this time the Board was reviewing the existing plan, proposed plan, and the recorded decision, Ms. Backus then opened the Board for any questions and comments.

Mr. Drexler asked for the location of the well, also the total square footage of the proposed house. Mr. Dubois stated that the well is located near the water, *he then pointed out the location on the plan*. The proposed house has a total of 986 square feet; the existing house has 989 square feet.

Mr. Collette made a comment that the proposed plan shows the setbacks are less nonconforming.

*There were no abutters present tonight for this hearing.*

With no further questions and comments from the Board, Mr. Drexler then made a motion to close the public hearing. Ms. Kresco seconded the motion and the vote was 5-0 in favor.

Ms. Backus announced the members sitting in voting are: Mr. Drexler, Mr. Collette, and herself.

Mr. Collette made a motion to approve the special permit to Mr. Bouley to remove and reconstruct an existing single-family residential dwelling at 67 Jolicoeur Avenue. The conditions

are as the same as in the original decision issued in January of 2009, with the exception of the changes in the setback dimensions according to the plan submitted tonight, August 25, 2009. Mr. Drexler seconded the motion and the **vote was 3-0** in favor. The following was included in the motion:

***Findings:*** The Board determined that the findings met the requirements in M.G.L., Chapter 40A., Sec. 9 and Section 7.2 of the Spencer Zoning Bylaws:

1. That the proposed use (single-family residential) is in harmony with the general purpose and intent of the zoning bylaw.
2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.
3. That the proposed use will not impair the integrity or character of the district or adjoining zones, nor will it be detrimental to the health, safety, or welfare of the neighborhood or the Town.

***In addition,*** the Zoning Board made the following finding in according with Section 4.9.2.A.2 of the Spencer Zoning Bylaws:

1. That the proposed extension or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

This approval is granted with the following ***conditions:***

1. The plan that was submitted for the design is herein incorporated as part of this decision. Any change requires re-submittal to the Board.
2. This approval replaces the Special Permit Approval of the Zoning Board (see Deed Book 44078, Pg. 371).
3. Construction activities shall not commence until all required approvals and permits are obtained.

**Approval of Minutes:** For June 6 2009, and June 23, 2009

Mr. Drexler made a motion to accept the minutes for June 9, 2009. Ms. Kresco seconded the motion and the vote was 3-0 in favor with Ms. Crawford and Mr. Collette abstaining.

Mr. Drexler made a motion to accept the minutes for June 23, 2009. Mr. Collette seconded the motion and the vote was 3-0 in favor with Ms. Crawford and Ms. Kresco abstaining.

## **Other Discussion:**

**A. Zoning Amendments – Earth Removal.** Mr. Gaudette said that he has prepared proposed bylaw amendments for the Fall Town Meeting. One of the amendments is for earth removal. The purpose of the amendment is to establish a standard guideline for application submittals. The current bylaw on earth removal doesn't provide specific guidelines. The Use Table in the Spencer Zoning Bylaws indicates that the use is permitted by obtaining a special permit, which the Zoning Board of Appeals is the granting authority.

The deadline to submit articles for the warrant for the Fall Town Meeting is September 14, 2009. The Planning Board will vote to sponsor the Article at its regular meeting on September 1, 2009. Mr. Gaudette asked the Board to review the proposed amendment. Any suggestions and comments from the Board can be made until prior to the Planning Board meeting on September 1, 2009.

## **B. Election of the Officers.**

Ms. Backus made a motion to nominate Mr. Collette to be the Chairman. Mr. Drexler seconded the motion and the vote was 5-0 in favor.

Mr. Collette made a motion to nominate Ms. Crawford to be the Clerk. Mr. Drexler seconded the motion and the vote was 5-0 in favor.

## **Old Business: None**

Ms. Backus made a motion to adjourn the meeting at 8:30 p.m. Ms. Kresco seconded the motion and the vote was 5-0 in favor.

Submitted By:

---

Bea Meechan, Senior Clerk, ODIS